

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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United States of America,

Case No. 21-cr-93 (JRT/TNL)

Plaintiff,

v.

**ORDER**

Robbin Allen Thomas,

Defendant.

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This matter comes before the Court on standby counsel Steven J. Wright's<sup>1</sup> letter requesting a continuance on behalf of Defendant. (ECF No. 77.) This Court previously set a deadline of January 7, 2022, for Defendant to: (1) alert the Court whether he would like to withdraw or proceed on the motions previously filed by Attorney F. Clayton Tyler; and (2) file any new pretrial motions. (ECF No. 74 at 2.)

In the letter, standby counsel states that Defendant wishes to maintain the previously-filed motions, and also wishes to file additional motions. (ECF No. 77 at 1.) Defendant requests a four-week extension to file those motions due to a lockdown at the Sherburne County Jail caused by an outbreak of COVID-19. (*Id.* at 1-2.) Defendant has also filed a statement of facts in support of exclusion of time under the Speedy Trial Act, where he states that he understands an extension of the motion-filing deadline would also delay the motions hearing, and that he waives his rights under the Speedy Trial Act in order

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<sup>1</sup> Defendant now proceeds pro se in this case. (*See, e.g.*, ECF No. 74.) He has consented to the appointment of standby counsel. (*Id.*) Mr. Wright was appointed as standby counsel for Defendant on December 21, 2021. (ECF No. 75.)

“to allow additional days to be excluded.” (ECF No. 78 at 1.) Based on this waiver, the Government does not object to the motion for continuance. (*See* ECF No. 77 at 2.)

Additionally, beginning on March 13, 2020, and continuing thereafter, the Honorable John R. Tunheim, Chief District Judge for the United States District Court for the District of Minnesota, has issued a series of General Orders in connection with the COVID-19 pandemic, addressing, among other things, criminal proceedings and trials.<sup>2</sup> On December 6, 2021, Chief Judge Tunheim entered General Order No. 32, which allows limited in-person proceedings for defendants who decline to consent to conducting the proceeding using videoconferencing, or telephone conferencing if videoconferencing is not reasonably available. *See generally In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 32 (D. Minn. Dec. 6, 2021). General Order No. 32 states that because only limited in-person proceedings may be held each day, criminal proceedings may be continued until the date that the criminal proceeding takes place.

General Order No. 32 continues to encourage the use of videoconferencing in criminal proceedings and states that, with the defendant’s consent, criminal proceedings will be conducted by videoconferencing, or telephone conferencing if videoconferencing is not reasonably available.<sup>3</sup> General Order No. 32 further provides that the presiding judge

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<sup>2</sup> All General Orders related to the COVID-19 pandemic may be found on the Court’s website at <https://www.mnd.uscourts.gov/coronavirus-covid-19-guidance>.

<sup>3</sup> *See also* General Order No. 33, which went into effect on December 21, 2021, vacated General Order No. 31, and extended the Court’s authorization to conduct certain criminal proceedings via video or telephone conference pursuant to the CARES Act “[b]ecause the emergency created by the COVID-19 outbreak continues to materially affect the functioning of court operations in the District of Minnesota.” *In re: Updated Guidance to Court Operations Under the Exigent Circumstances Created by COVID-19*, Gen. Order No. 33 (D. Minn. Dec. 17, 2021).

will enter orders in individual cases to extend deadlines and exclude time under the Speedy Trial Act to address delays attributable to COVID-19.

The Court previously inquired whether Defendant consented to conducting the criminal motions hearing using videoconferencing. (*See* ECF No. 14; ECF No. 28 at 2; ECF No. 34 at 2.) Defendant has indicated through counsel that he does not consent to videoconferencing for the criminal motions hearing. (ECF No. 50; ECF No. 64 at 1.) Consistent with the health and safety protocols of this Court and the facility in which Defendant is detained, the criminal motions hearing is continued to **February 24, 2022**.

Therefore, pursuant to 18 U.S.C. § 3161(h), this Court finds that the ends of justice served by granting a continuance outweigh the best interests of the public and Defendant in a speedy trial and such continuance is necessary to allow for Defendant to file new motions and effectively prepare for the hearing. Additionally, for the reasons addressed in General Order Nos. 32 and 33 and the well-documented concerns regarding COVID-19, the Court finds that the ends of justice served by ordering this continuance outweigh the best interests of the public and Defendant's right to a speedy trial under 18 U.S.C. § 3161(h)(7)(A). The Court further finds that, pursuant to 18 U.S.C. § 3161(h)(7)(B)(i), a miscarriage of justice would result if time were not excluded under these unique circumstances.

Based on all the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. Defendant's request to continue this matter as articulated in standby counsel's letter (ECF No. 77) is **GRANTED**.

2. The period of time from January 7 through February 24, 2022, shall be excluded from Speedy Trial Act computations in this case.

3. To the extent Defendant would like to file new pretrial motions, he shall do so on or before **February 4, 2022**.

4. The Government's response to any motions filed on or before February 4, 2022 is due **February 18, 2022**. The Notice of Intent to Call Witnesses must be filed by **February 18, 2022**.

5. Any Responsive Notice of Intent to Call Witnesses must be filed by **February 22, 2022**.

6. The criminal motions hearing is continued to **February 24, 2022**, at **1:30 p.m.**, in Courtroom 9W, Diana E. Murphy U.S. Courthouse, 300 South Fourth Street, **MINNEAPOLIS**, Minnesota.

7. **The trial date, and other related dates, will be rescheduled following the ruling on pretrial motions. Counsel must contact the Courtroom Deputy for Chief District Judge John R. Tunheim to confirm the new trial date.**

Dated: January 11, 2022

s/Tony N. Leung  
TONY N. LEUNG  
United States Magistrate Judge  
District of Minnesota

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